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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,248	11/25/2003	Yves P. Arramon	PX-15	6049

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EXAMINER	
CUMBERLEDGE, JERRY	

ART UNIT	PAPER NUMBER
3733	

NOTIFICATION DATE	DELIVERY MODE
08/27/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

intel_prop@arthrocare.com

Office Action Summary	Application No.	Applicant(s)	
	10/723,248	ARRAMON, YVES P.	
	Examiner	Art Unit	
	JERRY CUMBERLEDGE	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 June 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *25-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *25-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *06/28/2010*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25, 26, 29, 31, 32, 34, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Dardik et al. (U.S. Pat. No. 4,250,887).

Dardik et al. (Figs. 1-3) discloses an implant material injection system adapted for performing a percutaneous vertebroplasty procedure comprising: a remote actuator (drive syringe 22); a pump (24) comprising a piston (26) and a drive chamber (25), the pump (24) having a distal end (29) directly connected to a cannula (29 is connected to cannula 27), one of the pump or cannula have a handle (Fig. 2, ref. 48) capable of being used to leverage insertion of the cannula into the implant site (Fig. 2), the drive chamber adapted to hold implant material (25 is capable of holding implant material, such as 32), the piston adapted to drive the implant material through the distal end of the drive chamber to an implant site (26 is capable of driving implant material 32 through the distal end of 25 to an implant site such as in the leg); a control line (33) connecting the remote actuator and the pump (33 connected to 22 and 24), the control line engaging a piston head and adapted to advance the piston (the control line 33 engages piston head 26 via 38 and the control line adapted to advance piston 26 to deposit fluid 32,

abstract); and wherein the implant material comprises a flowable hard tissue implant material (25 is capable of holding implant material, such as flowable hard tissue implant material). The control line (Fig. 2, 33) comprises a fluid column (hydraulic fluid 35) adapted to advance the piston (column 4, lines 54-68 to column 5 lines 1-7). The control line has a length of at least 36 inches (column 5, lines 11-15). The control line has a length greater than 48 inches (column 5, lines 11-15). The system further comprising a cannula (Fig. 2, 27) removably connected with the distal end of the drive chamber (column 4, lines 1-3). The implant material comprises Polymethylmethacrylate (Fig. 2, 25 is capable of holding implant material, such as Polymethylmethacrylate).

Dardik et al. (Figs. 1-3) discloses an implant material injection system for performing a percutaneous vertebroplasty procedure comprising: a remote actuator (drive syringe 22); a pump (24) comprising a piston (26) and a drive chamber (25), wherein the pump (24) is connected with a cannula (27) at a pump distal end (29); one of the pump or the cannula have a handle (Fig. 2, ref. 48) to leverage insertion of the cannula into an implant site; a control line (33) connecting the remote actuator and the pump (33 connected to 22 and 24), wherein the control line (33) is linked to the piston (33 engages 26 via 38) and comprises means for advancing the piston (112 6th paragraph invoked, means for advancing piston is hydraulic fluid 35) to drive an implant material through a drive chamber distal end to an implant site (the means for advancing the piston 35 is capable of driving an implant material such as 32 to an implant site); and wherein the implant material comprises a flowable hard tissue implant material (35 is capable of driving an implant material, such as flowable hard tissue implant material).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 27, 28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dardik et al. (U.S. Pat. No. 4,250,887).

Dardik et al. disclose the claimed invention except for the control line has a length of about one foot; the control line has a length of about 36 inches; the control line has a length of about 48 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the control line at the above lengths, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dardik et al. (U.S. Pat. No. 4,250,887) in view of Waldenburg (U.S. Pat. No. 5,496,284).

Dardik et al. discloses the claimed invention except for an implant material reservoir connected with the pump, the pump adapted to draw implant material from the material reservoir into the drive chamber.

Waldenburg discloses (Fig 3) an implant material reservoir (22) connected with the pump (60, 62, 38), the pump adapted to draw implant material from the material reservoir into the drive chamber (abstract). Waldenburg discloses an implant material reservoir in order to increase the syringe capacity, provide a sterile self-contained single use syringe, and mix two components (column 1, lines 20-46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the system of Dardik et al. with the material reservoir in view of Waldenburg in order to increase the syringe capacity, provide a sterile self-contained single use syringe, and mix two components (column 1, lines 20-46).

Response to Arguments

Applicant's arguments filed 06/28/2010 have been fully considered but they are not persuasive.

Regarding the applicant's argument that the device of Dardik et al. does not have a "handle" the examiner respectfully disagrees. The protruding portion of reference 48 in Fig. 2 can be considered to be a handle, as one can hold ref. 48 and use it to provide leverage as claimed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY CUMBERLEDGE whose telephone number is (571)272-1346. The examiner can normally be reached on Monday-Friday 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571)272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C./
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733